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Equal Employment Opportunity Commission v. Roy Farms, Inc.

Judge Thomas O. Rice

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Equal Employment Opportunity Commission v. Roy Farms, Inc.

Keywords

EEOC, Martin Barrera, Roy Farms Inc., 12-CV-3117-TOR, Consent Decree, Hostile Work Environment, Constructive Discharge, Sexual Harassment, Male, Sex, Agriculture, Employment Law, Title VII

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EQUAL OPPORTUNITY
EMPLOYMENT COMMISSION,

Plaintiff,

MARTIN BARRERA,

Plaintiff-Intervenor,

v.

ROY FARMS, INC.,

Defendant.

NO: 12-CV-3117-TOR

CONSENT DECREE

1. NATURE OF THE ACTION

1.1 This action originated when Martin Barrera filed discrimination charge number 551-2011-00165 against Defendant Roy Farms, Inc. (“Roy Farms”) on December 6, 2010, with the U.S. Equal Employment Opportunity Commission (the “Commission”). Mr. Barrera alleged that Roy Farms subjected him and other male

1 workers to a hostile work environment based on sex through the
2 conduct of an orchard foreman, and that he was constructively
3 discharged by Roy Farms, in violation of Title VII of the Civil Rights
4 Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e, *et seq.*

5 1.2 The Commission investigated Mr. Barrera’s charge and discovered
6 the related claims of Ricardo Rios, Raymundo Guzman, Umberto
7 Ortuno, and Rafael Iniguez, all alleging sexual harassment.

8 1.3 Following its investigation of Mr. Barrera’s allegations, the
9 Commission issued a Letter of Determination, finding reasonable
10 cause to believe that Roy Farms violated Title VII by subjecting Mr.
11 Barrera to a hostile work environment based on sex, which led to his
12 constructive discharge. The Commission later issued an Amended
13 Letter of Determination, finding that similarly situated male
14 employees (Ricardo Rios, Raymundo Guzman, Jesus Mendez,
15 Umberto Ortuno, and Rafael Iniguez) were also harassed because of
16 their sex (male).

17 1.4 The Commission filed this lawsuit against Roy Farms on behalf of
18 Mr. Barrera, Mr. Rios, Mr. Guzman, Mr. Iniguez, and Mr. Ortuno on
19 September 28, 2012, in the United States District Court for the
20 Eastern District of Washington, alleging sexual harassment and
constructive discharge. The parties filed a stipulated motion to amend
the Commission’s complaint on December 17, 2013, to voluntarily

1 dismiss Mr. Ortuno from this action. The Court granted the motion
2 on February 11, 2014. Mr. Barrera, Mr. Rios, Mr. Guzman, and
3 Mr. Iniguez are collectively referenced in this Consent Decree as the
4 “Claimants.”

5 1.5 Mr. Barrera filed a complaint in intervention on October 13, 2012,
6 alleging that Roy Farms violated Title VII and the Washington Law
7 Against Discrimination.

8 1.6 Roy Farms denies any wrongdoing in this action.

9 1.7 The Commission and Roy Farms wish to resolve fully and finally all
10 claims arising out of the EEOC’s complaint and the Charge of
11 Discrimination filed with the EEOC by Mr. Barrera.

12 1.8 The Commission and Roy Farms enter into this Consent Decree to
13 further the objectives of equal employment opportunity as set forth in
14 Title VII.

15 1.9 This Consent Decree shall be entered only upon the Court’s review,
16 approval, and entry of separately-filed dismissal pleadings to be filed
17 by the Plaintiff-Intervenor concurrently with the filing of this
18 Consent Decree.

19 **2. JURISDICTION AND VENUE**

20 2.1 Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451,
1331, 1337, 1343, and 1345/1367 and 42 U.S.C. § 2000e-5. The
Commission and Roy Farms agree that the underlying acts are

1 alleged to have taken place within the jurisdiction of the United
2 States District Court for the Eastern District of Washington.

3 **3. SCOPE OF SETTLEMENT**

4 3.1 This Consent Decree is the final and complete resolution of all claims
5 that were made or could have been made by the Commission on
6 behalf of the Claimants in this action against Roy Farms. Upon entry
7 of this Consent Decree, all claims in the Commission's entire lawsuit
8 shall be dismissed with prejudice, subject only to enforcement of this
 Consent Decree.

9 3.2 This Consent Decree is not an adjudication or finding on the merits
10 of the matter. This Consent Decree and compliance with it shall not
11 be construed as an admission by Roy Farms of any liability
12 whatsoever or as an admission by Roy Farms of any violation of
13 anyone's rights, a violation of statute, or any discrimination. Roy
14 Farms expressly denies any wrongdoing of any kind.

15 3.3 This Consent Decree shall encompass and apply to all Roy Farms'
16 employees, foremen, managers, and officers at its facilities in Eastern
 Washington.

17 **4. MONETARY RELIEF**

18 4.1 In settlement of all claims in the Commission's Complaint against
19 Roy Farms, Roy Farms will provide \$85,000 ("Settlement Amount")
20 within 15 business days of the entry of this Consent Decree.

1 4.2 The Commission will provide Roy Farms with the name, the
2 individual amount payable from the Settlement Amount, and the
3 address for each Claimant for purposes of making payment under
4 section 4.1.

5 4.3 Roy Farms will mail a copy of any check made payable to the
6 Claimants to the following address at the same time that payment is
7 issued to any payee:

8 Jamal Whitehead
9 U.S. Equal Employment Opportunity Commission
10 Seattle Field Office
11 909 First Avenue, Suite 400
12 Seattle, WA 98104

13 5. **INJUNCTIVE & OTHER RELIEF**

14 5.1 **General Provisions.** Roy Farms, its officers, managers, and foremen
15 shall not engage in practices that constitute discrimination in
16 violation of Title VII based on an employee or applicant's sex. In
17 recognition of its continuing obligations under Title VII, Roy Farms
18 will ensure that the following policies and practices remain in effect
19 at all of its facilities in Eastern Washington for the duration of this
20 Consent Decree.

21 5.2 **Anti-Discrimination, Harassment, and Retaliation Policies.**

22 Within sixty (60) days of entry of the Consent Decree, Roy Farms
23 will review and, if necessary, revise and/or modify its anti-
24 discrimination, harassment, and retaliation policies applicable to all

Roy Farms facilities in Eastern Washington to ensure that such policies include the following elements:

- (A) Clear definitions of prohibited discriminatory harassment and retaliation, with specific reference to harassment based on sex;
- (B) Clear examples to supplement the definitions of harassment based on sex and retaliation for engaging in protected EEO activity, including examples involving same-sex sexual harassment;
- (C) Discipline up to and including termination for incidents of discriminatory harassment, retaliation and the failure of managers and, foremen to report harassment and retaliation of which they have knowledge;
- (D) Complaints of harassment or retaliation may be made orally or in writing;
- (E) Roy Farms will conduct a prompt and thorough investigation after a complaint is made or received, and , where appropriate, take remedial action upon conclusion of an investigation; and
- (F) Roy Farms will advise complaining parties when the matter has been resolved, including whether remedial action, has been taken.

5.3 Language used in policies. Roy Farms shall ensure that all of its EEO policies and procedures, including those specifically referenced

1 in this Consent Decree, are written in English and Spanish, or any
2 other language principally used in the workplace, and are available to
3 all employees.

4 5.4 **Disseminating policies.** Roy Farms will disseminate any new or
5 revised anti-discrimination, harassment, and retaliation policies as
6 described above by (a) distributing the new policies to its existing
7 workforce within thirty (30) days of the policy's adoption; and (b)
8 providing a copy of the policies to all new employees within ten (10)
9 days of being hired or rehired.

10 5.5 **Complaint Procedures.** Within sixty (60) days of entry of the
11 Consent Decree, Roy Farms will review and, if necessary, revise
12 and/or modify its internal complaint policies and procedures designed
13 to encourage employees to come forward with complaints about
14 alleged or suspected violations of its anti-discrimination, harassment,
15 and retaliation policies. These mechanisms will continue to include
16 avenues for making complaints to Roy Farms personnel other than
17 the complaining employee's immediate supervisor. This policy shall
18 state that it will protect the confidentiality of the complaining party to
19 the extent possible. Phone numbers for all avenues for reporting are
20 and will continue to be included in the policy as well as posted in a
conspicuous place at each of Roy Farm's facilities.

1 (A) **Prompt Investigations.** Roy Farms shall ensure that its policies
2 and procedures provide that complaint handling and disciplinary
3 procedures regarding all complaints of discrimination,
4 harassment, or retaliation shall be investigated and addressed
5 promptly.

6 5.6 **Managers and Foremen Monitoring Duties.** Roy Farms will advise
7 its managers and foremen of their duty to actively monitor their work
8 areas to ensure employees' compliance with the company's EEO
9 policies, and to report any incidents or complaints of discrimination,
10 harassment, or retaliation of which they become aware to the Roy
11 Farms employees responsible for handling such complaints. Roy
12 Farms' discipline policy promotes supervisor accountability with
respect to EEO policies and procedures.

13 5.7 **Managers and Foremen Qualifications and Performance**
14 **Standards.** Roy Farms, in evaluating the performance of foremen and
15 managers, will consider how managers and foremen handle EEO
16 issues. Roy Farms will include "commitment to equal employment
17 opportunity" as a criterion for qualification for manager and foreman
positions to the same extent that other criteria are included.

18 5.8 **Manager and Foremen Training.** Within sixty (60) days of entry of
19 the Consent Decree, Roy Farms will require its managers and
20 foremen to attend a mandatory training on harassment, employment

1 discrimination, and retaliation for engaging in protected EEO
2 activity. Such training will be provided in English or Spanish as
3 needed. *These training requirements will be completed annually for*
4 *the duration of this Consent Decree.* Roy Farms will maintain
5 attendance records for such training.

6 5.9 Roy Farms will ensure that all training is conducted by persons
7 knowledgeable in providing training in discrimination, harassment,
8 and retaliation.

9 (A) ***Trainer & Training Materials.*** Roy Farms shall identify for the
10 Commission any training programs discussed above in paragraph
11 5.8 at least 30 days before the training and shall forward the
12 Commission information sufficient to establish the content of
13 those programs. The Commission shall provide any comments it
14 may have regarding Roy Farms' training program at least 14 days
15 before the training.

16 5.10 **Employee Records.** Within thirty (30) days of entry of this Consent
17 Decree, Roy Farms will certify to the Commission that the
18 Claimants' personnel file(s) have no reference to any charge or
19 allegation of discrimination against Roy Farms and this lawsuit.
20 Upon request, Roy Farms will provide the Claimants with a neutral
employment reference confirming the dates of employment and
position(s) held.

1 5.11 **Reporting.** Roy Farms shall report to the Commission for a period of
2 three (3) years, which shall run from the date on which the United
3 States District Court for the Eastern District of Washington enters
4 this Consent Decree. The reports must be in writing and submitted on
5 an annual basis during the three-year reporting period, with the first
6 of such reports being completed no later than six months after the
7 Court enters the Consent Decree. The reports must include the
8 following elements:

9 (A) **Certifications.** As part of each annual report, Roy Farms will
10 certify that it has:

- 11 (1) Maintained written EEO policies and procedures and
12 distributed copies of its EEO policies to all new and
13 current employees, as described in paragraphs 5.2-5.4,
14 and to all employees during the training described in
15 paragraph 5.8;
- 16 (2) Complied with the training provisions enumerated in this
17 Consent Decree, as provided in paragraph 5.8;
- 18 (3) Continued to promote policies and procedures to promote
19 EEO accountability by managers and foremen, as
20 required by paragraphs 5.6 and 5.7;
- (4) Complied with all other provisions of this Consent
 Decree; and

- 1 (5) Confirmed that the attendance records of the training are
2 in Roy Farms' possession.

3 (B) ***Copies of Documents.*** As part of each annual report, Roy Farms
4 will attach copies of the following documents:

- 5 (1) A copy of Roy Farms' current EEO policies and
6 procedures;
- 7 (2) A list identifying changes, modifications, revocations or
8 revisions, if any, to EEO policies and procedures,
9 concerning or affecting Roy Farms' harassment,
10 discrimination, and retaliation policies;
- 11 (3) A summary of all discrimination or retaliation complaints
12 at Roy Farms, if any, by employees and the resolution of
13 each such complaint, identifying the date of the incident,
14 date of report, resolution and date of resolution for each
15 complaint. Complaining and accused employees will
16 each be assigned a number, which will be included in the
17 list of complaints; and
- 18 (4) A sign-in sheet or list of names and job titles of the
19 managers and foremen who completed EEO training, as
20 described in paragraph 5.8, and the date(s) the training
was conducted;

1 5.12 **Posting.** Roy Farms will post the notice attached to this Consent
2 Decree as *Exhibit A* in a clearly visible location frequented by its
3 employees. The notice will be posted in English and Spanish and will
4 remain posted for the duration of the Consent Decree.

5 **6. SUCCESSOR LIABILITY**

6 6.1 During the term of this Consent Decree, Roy Farms will provide any
7 potential successor-in-interest with a copy of this Consent Decree
8 within a reasonable time of not less than thirty (30) days prior to the
9 execution of any agreement for acquisition or assumption of control
10 of any or all of Roy Farm's facilities, or other material change in
11 corporate structure, and will simultaneously inform the Commission
12 of the same.

13 **7. DISPUTE RESOLUTION**

14 7.1 If the Commission determines that Roy Farms has not complied with
15 the terms of this Consent Decree, the Commission will provide
16 written notification of the alleged breach to Roy Farms and its
17 counsel of record. The Commission may not petition the Court for
18 enforcement of this Consent Decree for at least thirty (30) days after
19 notifying Roy Farms of the alleged breach. The Commission and Roy
20 Farms shall use the 30-day period following the written notice for
 good faith efforts to resolve the dispute. The Commission may seek
 immediate enforcement, however, in situations where a 14-day delay

1 in enforcing the Consent Decree may cause harm to the Commission
2 or the Claimants.

3 **8. NOTICE**

4 8.1 All notices, reports and correspondence required under this decree
5 will be delivered to the attention of:

6 Jamal Whitehead
7 Equal Opportunity Commission
8 Seattle Field Office
9 909 First Avenue, Suite 400
10 Seattle, WA 98104
11 jamal.whitehead@eeoc.gov

12
13 Brendan V. Monahan
14 Stokes Lawrence Velikanje Moore & Shore
15 120 N. Naches Avenue
16 Yakima, WA 98901-2757
17 bvm@stokeslaw.com

18 **9. RETENTION OF JURISDICTION**

19 9.1 The United States District Court for the Eastern District of
20 Washington will retain jurisdiction over this matter for the duration
of this Consent Decree.

10. DURATION OF CONSENT DECREE

10.1 This Consent Decree shall be in effect for three (3) years from the
date the Court enters the Consent Decree. If the Commission
petitions the Court for breach of this Consent Decree, and the Court

1 finds Roy Farms to be in violation of the terms, of the Consent
2 Decree, the Court may extend the duration of this Consent Decree.

3 **11. PRESS RELEASE**

4 11.1 The Commission will provide Roy Farms with 24 hours' written
5 notice before issuing a press release regarding the resolution of this
6 lawsuit.

7 **12. EFFECTIVE DATE**

8 12.1 The parties are not bound by any provision of this Consent Decree
9 until it is entered by the Court.

10 **IT IS SO ORDERED.**

11 The District Court Executive is hereby directed to enter this Order and
12 provide copies to counsel.

13 **DATED** February 27, 2014.



16
17
18
19
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

Exhibit A**NOTICE TO EMPLOYEES**

This notice is posted pursuant to the settlement of a lawsuit: *EEOC and Barrera. v. Roy Farms, Inc.*, 12-CV-03117-TOR (E.D. Wash.). The settlement is by “Consent Decree,” meaning a court-ordered document that contains all settlement terms. By entering into the Consent Decree, Roy Farms does not admit to any wrongdoing or liability.

In accordance with the Consent Decree, Roy Farms will provide anti-discrimination training to all supervisors and management; provide its Equal Employment policies to all employees; implement policies to ensure supervisor accountability with regard to anti-discrimination practices; and report to the EEOC all complaints of sexual harassment or retaliation it receives from Roy Farms’ employees for the next three (3) years.

Federal law prohibits an employer from discriminating against any individual based on the individual’s sex with respect to hiring, promotion, demotion, terms and conditions of employment, and/or termination. Federal law also prohibits an employer from allowing any employee to be harassed because of sex. It is also unlawful for an employer to retaliate against those who oppose or resist harassment or discrimination or participate in investigations or legal proceedings regarding complaints of discrimination.

If you believe that you have been harassed, discriminated against because of your sex, national origin, age, race, color, religion, or disability, you are encouraged to contact your supervisor or the Human Resources Manager at 509.542.3494.

Employees have the right to bring complaints of discrimination, sexual harassment, and/or retaliation to the U.S. Equal Employment Opportunity Commission, Seattle Field Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6885, and 1-800-699-4000.

This notice shall remain posted in English and Spanish until February _____, 2017. This official Notice shall not be altered, defaced, covered, or obstructed by any other material.